UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

KLEEN PRODUCTS LLC, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

PACKAGING CORPORATION OF AMERICA, et al.,

Defendants.

Case No. 1:10-cv-05711

Judge Milton I. Shadur

Magistrate Judge Nan R. Nolan

PLAINTIFFS' MOTION SEEKING PARTIAL RECONSIDERATION OF ORDER GRANTING IN PART AND RESERVING IN PART DEFENDANTS' MOTION *IN LIMINE*

Plaintiffs respectfully request that the Court reconsider its Order (Dkt. No. 297) granting in part and reserving in part Defendants' Motion *in Limine* (Dkt. No. 295). More specifically, Plaintiffs submit that Dr. Carol Tenny should not be excluded from testifying at the February 21, 2012 evidentiary hearing for the following reasons:

1. It was not Plaintiffs' understanding that the parties were required to disclose all experts and summarize their anticipated testimony in opening briefs submitted on February 6, 2012. This view is supported by a review of the January 17, 2012 status hearing transcript and the Court's minute entry of that same date.

2. Plaintiffs did disclose in their February 6, 2012 opening brief that their team included a linguist (Pls.' 2/6/12 Br. at 12), but did not identify Dr. Tenny by name or include a summary of any anticipated testimony because, at that juncture, it was not apparent to Plaintiffs that Dr. Tenny would need to testify at the February 21, 2012 hearing.

3. Plaintiffs' determination of the precise scope of testimony needed for the February 21, 2012 hearing was not determined until after opening briefs had been submitted.

4. Despite their efforts to otherwise limit the scope of the hearing, in their opening brief, Defendants effectively expanded the scope of the ESI search methodology issue by placing the propriety of their Boolean search strings directly at issue. Indeed, Defendants attached as exhibits to that brief several Defendant-specific search strings that had never previously been disclosed to Plaintiffs. Moreover, Defendants intend to introduce testimony from Messrs. Brown and Regard concerning testing and validation of their search terms. *See* Defs.' 2/6/12 Br. at 18 (Dkt. No. 288). Plaintiffs should be allowed to present rebuttal testimony through Dr. Tenny.

5. Defendants' discussion of their own experts is certainly not robust; Defendants did not even submit expert resumes with their opening (or reply) brief and their experts did not submit any written reports.

6. Plaintiffs provided Dr. Tenny's written statement by the February 16, 2012 deadline and it cannot reasonably be said that Defendants will suffer undue prejudice if Dr. Tenny is allowed to testify.

For all the reasons stated above, Plaintiffs ask that the Court reconsider the decision to exclude Dr. Tenny from testifying at the February 21, 2012 hearing. In the alternative, Plaintiffs ask that the Court reserve ruling on that portion of Defendants' Motion *in Limine* and evaluate at the hearing the extent to which Dr. Tenny's testimony will be relevant for purposes of rebutting direct testimony from Defendants' experts.

Dated: February 17, 2012

Respectfully submitted,

/s/ Michael J. Freed

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